

No. 1864

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

JOHN S. SEATTER,

Petitioner,

vs.

THE DISTRICT COURT FOR THE DISTRICT OF
ALASKA, DIVISION NO. 1,

Respondent.

**Petition for Writ of Certiorari to the District Court
of the United States, District of Alaska,
Division No. 1.**

FILED

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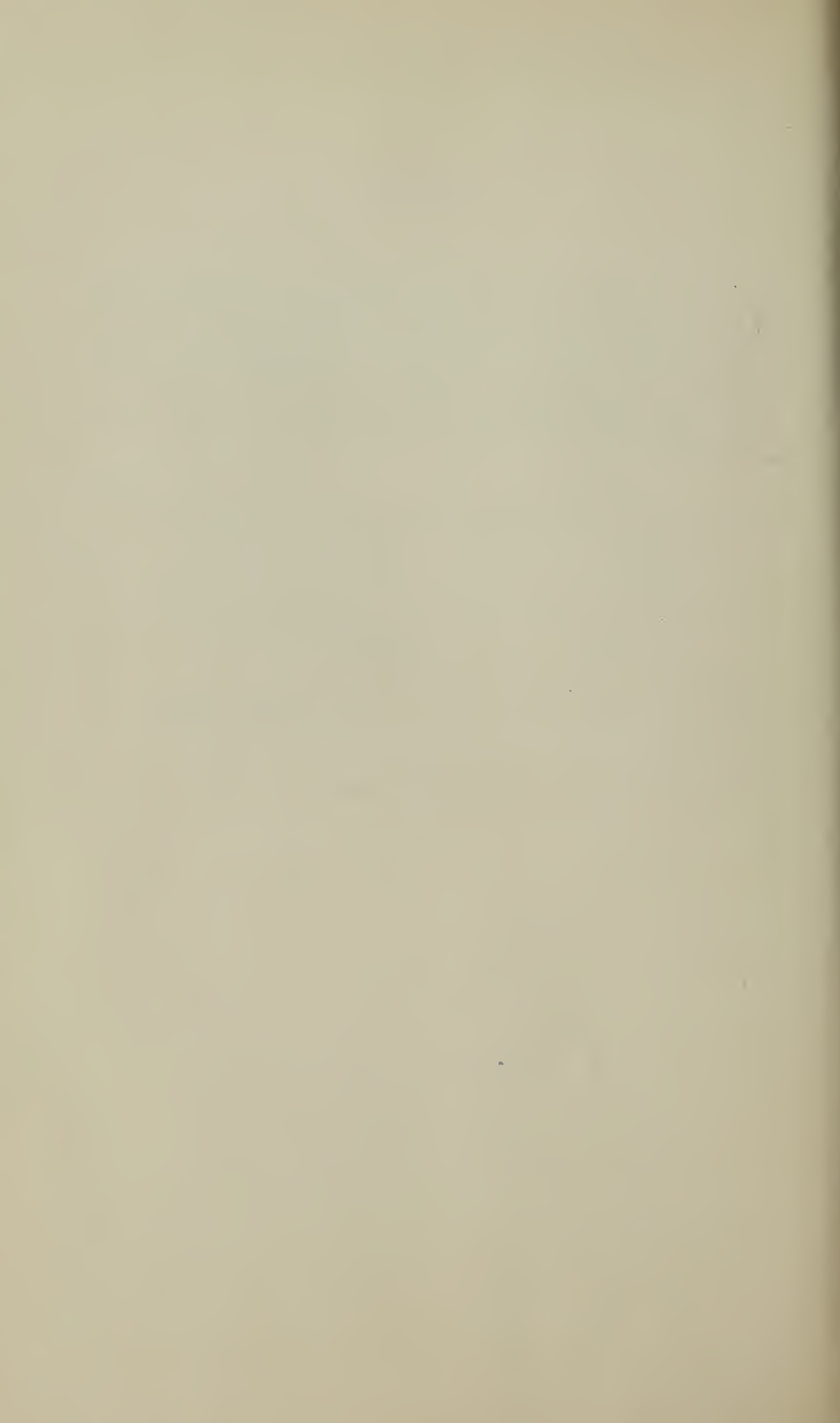
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

JOHN S. SEATTER

vs.

THE DISTRICT COURT FOR THE DISTRICT
OF ALASKA, DIVISION NUMBER ONE.

Petition for Writ of Certiorari.

And now comes the petitioner and respectfully
represents:

I.

That heretofore, to wit, on or about the 9th day
of February, 1905, there was filed in said District
Court a complaint, in words and figures as follows,
to wit:

**Complaint [in Evergreen Cemetery Assn., etc., vs.
Seatter].**

*In the United States District Court for the District
of Alaska, Division No. 1.*

THE EVERGREEN CEMETERY ASSOCIA-
TION, an Association Having Corporate
Powers,

Plaintiff,

vs.

JOHN S. SEATTER,

Defendant.

Comes now the said plaintiff, and complains of
said defendant, and for cause of action alleges:

I.

That said, the Evergreen Cemetery Association,

plaintiff herein, is an association duly organized and existing under and by virtue of the provisions of the Code of the District of Alaska, having corporate powers.

II.

That heretofore, to wit, about the middle of April, 1891, the Evergreen Cemetery Association, an association of citizens of the United States and of the town of Juneau and vicinity, in the District of Alaska, was organized for the purpose of providing a burial place for the dead of said town and vicinity, and did about said month of April locate and claim for cemetery purposes and enter into the possession of that certain piece or parcel of land about three-quarters of a mile from the townsite of Juneau, in a northwesterly direction, more particularly bounded and described as follows, to wit:

Beginning at the southwest corner of what is known as the Evergreen Cemetery, from which U. S. Monument No. 3 bears S. 29 deg. 16" W. 439 feet; thence north 56 deg. 00" east 525 feet to the northwest corner of said cemetery; thence south 74 deg. 32" east 512 feet, to the most northerly corner thereof; thence south 44 deg. 15" east 264 feet to the northeast corner of said cemetery; thence south 56 deg. 00" west 788 feet to the southeast corner thereof; thence north 4 deg. 15" west 660 feet to the place of beginning, and ever since grantor and this plaintiff have been in possession and entitled to the possession thereof, except as herein alleged.

III.

That thereafter, and in the month of May, 1891,

said association caused said ground to be surveyed, and during said year expended large sums of money in clearing and fencing the same, and building bridges and a road for the convenient approach thereto. That ever since said time said cemetery was used and claimed by said Evergreen Cemetery Association for cemetery purposes until the same was conveyed to this plaintiff, as hereinafter mentioned, since which time said plaintiff has been using the same as a burial place for the dead.

IV.

That heretofore, by certain mesne conveyances, the land described in paragraph II hereof has been conveyed to the Evergreen Cemetery Association, the plaintiff herein, which association is composed of citizens of the United States of said Juneau and vicinity, in the District of Alaska.

V.

That said plaintiff claims the right to occupy and possess said premises and is entitled to the possession thereof by virtue of full compliance with the local laws and rules of the citizens of the United States and of said Juneau, Alaska, for the occupation and possession of squatters' rights, and by the actual prior possession of all of said property located upon the public domain of the United States for cemetery purposes.

VI.

That on or about the 19th day of August, 1895, the said defendant wrongfully entered upon a parcel of said claim, to wit: the part of said cemetery, which is intersected by the exterior lines of survey Lot No.

307, known as the Initial and Lower Juneau Mountain Lode Claims, as is shown by plat marked "Exhibit A," filed on the 13th day of January, 1905, in the United States Land Office, at Juneau, Alaska, with the adverse claim of said plaintiff, against the entry of said Scatter for patent; said ground so intersected being described by metes and bounds as follows, to wit:

Commencing at the southwest corner of said cemetery on line 2-3, survey No. 307, thence south 66 deg. 00" east 60 feet from corner No. 3 of said survey No. 307; thence north 56 deg. 15" west 340 feet to the place of beginning, and that defendant has ever since hitherto wrongfully withheld the possession of said parcel of said cemetery from the plaintiff to its damage in the sum of five hundred dollars.

VII.

That heretofore, to wit, in the year 1897, and claiming a renewal on the 14th day of November, 1904, said defendant filed his application in the United States Land Office now located at Juneau, Alaska, in the District belonging to which said ground is situated, for a patent for his said pretended Initial placer mining claim, initial and lower Juneau mountain lode claims, and that afterwards and during the sixty days' publication required by law, said plaintiff filed its adverse claim in said land office.

VIII.

That this suit is brought in support of said adverse claim, and that plaintiff necessarily disbursed, expended and paid out the sum of twenty-five (\$25.00) dollars for plats, abstracts and copies of papers filed

in said land office with his said adverse claim, and also a reasonable fee, to wit, one hundred dollars for the expense and preparing of said adverse claim.

IX.

That all of said ground hereinbefore described is non-mineral ground and of no value whatever for placer mining purposes, and is fit for agriculture or cemetery purposes.

Wherefore said plaintiff prays judgment against defendant—

1. For the recovery and possession of said parcel of said cemetery;
2. For the sum of five hundred (\$500.00) dollars damages;
3. For the sum of one hundred and twenty-five (\$125.00) dollars spent in support of said adverse claim;
4. For costs of suit.

Then follows the supplemental complaint as follows:

Supplemental Complaint [in Evergreen Cemetery Assn., etc., vs. Seatter].

*“In the District Court for the District of Alaska,
at Juneau, Division No. 1.*

No. 404.

C. W. YOUNG, B. M. BEHREND, JOHN G. HEID, JOHN OLDS, and R. P. NEOSON,
Trustees of the EVERGREEN CEMETERY ASSOCIATION,

Plaintiff,

vs.

JOHN S. SEATTER,

Defendant.

Upon leave first had and obtained from this court, come now the above-named plaintiff and file this their supplemental complaint in this action, alleging facts material to plaintiff's cause, occurring after the filing of the original complaint, herein, constitutes plaintiff's cause of action.

That since the commencement of this action, and after the filing of the protest and adverse claim of plaintiff against the application of defendant, in the said United States Land Office, for a United States Patent for the "Initial" placer claim, and the "Initial" and Lower Juneau Mountain lode mining claims, and in said complaint alleged, the "Department of the Interior" of the Government of the United States, by and through its Secretary of the Interior, the Hon. E. A. Hitchcock, determined in favor of said plaintiffs, protestant and adverse

claimants, the contest initiated in said U. S. Land Office, at Juneau, Alaska, upon an appeal taken by said defendant to the Secretary of the Interior from the decision of said U. S. Land Office, at Juneau, Alaska, and which said ruling and decision and determination of said contest and adverse proceeding, made and entered by said Secretary of the Interior, in favor of said plaintiffs, and against said defendant, is in words and figures as follows, to wit:

“DEPARTMENT OF THE INTERIOR.

Washington, Feb. 15th, 1907.

36—106.

C. F. SHELDON et al.,

vs.

JOHN S. SEATTER.

The Commissioner of the General Land Office.

Sir: November 14, 1904, after various proceedings not necessary to be herein set forth, John S. Seatter filed in the local land office at Juneau, Alaska, an application for patent to the Initial Placer claim, and the Initial and Lower Juneau Mountain lode claims (amended survey No. 307), situated a short distance from the town of Juneau.

Against this application separate protests were, on January 13, 1905, filed by C. F. Sheldon and the Evergreen Cemetery Association of Juneau, in each of which protests it is charged, amongst other things, that the land applied for is non-mineral in character. Hearing was had on these protests, commencing May 11, 1905, at which testimony was submitted on behalf of the protestants and the protestees; December 15, 1905, the local officers, who during the course of

the hearing had made a personal inspection of the land, found in substance and effect that the land is not mineral in character within the meaning of the mining laws, and for that reason recommended that the application be rejected. On appeal by the applicant your office by decision of August 8, 1906, affirmed the action of the local officers and held the application for rejection. The applicant again appeals. The Department has carefully examined and considered the testimony on the case, and is of the opinion that same shows that the land does not contain mineral in such quantities as to render it more valuable for mining than for agricultural purposes (for which latter purposes it appears to have been used exclusively by the applicant for about six years next preceding the date of the hearing), and hence is not subject to disposition under the mining laws. The decision appealed from is therefore affirmed.

II.

That the decision of said Department of the Interior by and through its Secretary, as aforesaid, is *res adjudicata*, and binding upon this court.

Wherefore, plaintiff prays judgment against the said defendant as originally prayed for in the original complaint herein.

HEID & LOVE,

Attorneys for Plaintiff.

Duly verified as was the original complaint.

X.

That thereupon the defendant in said action, petitioner herein answered, denying the allegations of plaintiff's complaint in said action, and setting up

as a defence, first, that the said District Court was without jurisdiction to try said cause, and second, that since the said ruling of the Secretary of the Interior the defendant therein, petitioner herein had made a discovery of rock in places bearing quartz *place bearing quartz* of such value that would justify a reasonable man in expending money thereon.

That on or about April, 1910, the said District Court entered judgment against the defendant in said action, the petitioner herein, awarding the possession of said premises to the plaintiff in said suit and allowing a judgment for costs therein in favor of said plaintiff and against this petitioner, as such defendant.

XI.

That petitioner is informed and believes, and so alleges the fact to be, that the said District Court is a court of limited jurisdiction, limited by the constitution and the laws of Alaska.

XII.

That from the prayer of the complaint in said action the said action is an action of ejectment, and from the said supplemental complaint the said plaintiffs are protestants, and from the judgment of said court the said judgment is a judgment of ejectment, and that nowhere in the laws or by the laws of Alaska or by the constitution of the United States is a protestant given any rights in any court of the United States, and nowhere in said laws or by said constitution is any court of the United States given any jurisdiction to render a judgment of ejectment in favor of a protestant and against a mineral claim-

ant. To adjudicate all rights of a protestant belongs exclusively to the U. S. Land Office.

Wherefore petitioner prays:

Ist.

That a writ may issue directed to the District Court of the United States in and for the District of Alaska, Divison No. 1, directing said Court to send up the record in said cause of "Evergreen Cemetery Association vs. John S. Seatter," for the inspection of this Honorable Court;

II.

That the said judgment of said District Court may be declared void;

III.

That petitioner may have such other and further relief as to this Honorable Court may seem meet and equitable.

E. M. BARNES,
Attorney for Petitioner.

United States of America,
District of Alaska,—ss.

I, John S. Seatter, being first duly sworn according to law, depose and say: I am the petitioner above named; I have read the foregoing petition and know the contents thereof, that the same is true of my own knowledge except as to the matters and things therein stated on information and belief, and as to those matters and things I believe it to be true.

JOHN S. SEATTER.

The District Court, Dist. of Alaska, Div. No. 1. 11

Subscribed and sworn to before me June 6th, 1910.

[Seal]

GUY McNAUGHTON,
Notary Public for Alaska.

[Endorsed]: No. ——. Circuit Court of Appeals, 9th Circuit. John S. Seatter vs. Dist. Court, Dist. of Alaska, Div. No. 1. Petition for Writ of Certiorari. E. M. Barnes, Atty. for Petitioner.

[Endorsed]: No. 1864. United States Circuit Court of Appeals for the Ninth Circuit. John S. Seatter, Petitioner, vs. The District Court for the District of Alaska, Division No. 1, Respondent. Original. Petition for Writ of Certiorari to the District Court of the United States, District of Alaska, Division No. 1.

Filed June 14, 1910.

F. D. MONCKTON,
Clerk.

By Meredith Sawyer,
Deputy Clerk.

